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IN THE

Supreme Court of the United States

MITCH MCCONNELL, *et al.*,
Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

On Appeal from the
United States District Court
for the District of Columbia

BRIEF OF *AMICUS CURIAE* THE CENTER FOR RESPONSIVE POLITICS IN SUPPORT OF APPELLEES

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BOOKS

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NEWSPAPER ARTICLES

Anonymous, *Beasley Slams Politician Hodges*, NationalJournal.com (Oct. 19, 1998) <http://nationaljournal.com/members/adspotlight/1998/10/1008db1.htm> 22

AT&T Plan for Japan Cable Clears Hurdle, Bloomberg News, *available in* New York Times, July 10, 1999 25

Dennis K. Berman, Yochi J. Dreazen, *Global Crossing Deal May Hit Snag*, Wall Street Journal, July 9, 2003 24

J. Lynn Lunsford, Andy Pasztor, Anne Marie Squeo, *Space Woes Zap Loral, Boeing*, Wall Street Journal, July 16, 2003 24

Jeffrey Goldberg, *Next Target: Nicotine*, New York Times, August 4, 1996 20

TABLE OF AUTHORITIES—Continued

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John M. Broder, *Democrats Able to Circumvent Contribution Limit*, New York Times, December 22, 1999 ..... 12, 15

John Mintz, *China Aid Hurt U.S. Security, Panel Says*, Washington Post, December 31, 1998 24

Kenneth P. Doyle, *Fund-Raising Unit Linked to Mrs. Clinton Provided $200,000 in Soft Money to DSCC*, BNA's Money & Politics Report (December 6, 1999) <http://pubs.bna.com/> 13

Louis Jacobson, Shawn Zeller, *K Street for August 4, 2001*, National Journal, August 4, 2001 20

Mark H. Rodeffer, *Dems Hit Coleman on Campaign Cash*, NationalJournal.com (October 24, 2002) <http://nationaljournal.com/members/adspotlight/2002/10/1024mnsen1.htm> 18

Meg Kinnard, *Richardson Goes After Otter's Politics*, NationalJournal.com (September 19, 2002) <http://nationaljournal.com/members/adspot light/2002/09/0919brid1.htm> 18

Mike Soraghan, *'Soft' Cash Dominates Senate Race*, Denver Post, September 30, 2002 15

Peter H. Stone, *Some Hard Facts About Soft Money*, National Journal, March 23, 1996 ..... 17, 18

Robert Zausner, *Loophole Helps Clinton Exceed Donation Limit*, Philadelphia Inquirer, June 15, 2000 12

Ryan Connors, *Ferguson Hits Kennedy for Gambling Ties*, NationalJournal.com (March 29, 2002) <http://nationaljournal.com/members/adspotlight/2002/03/0329cfri1.htm> .. 22

TABLE OF AUTHORITIES—Continued

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Shaila Kaplan, Gary Cohen, *Of Perks and the Purse*, U.S. News & World Report, January 24, 2000 13

Susan B. Glasser, *Clinton Taps Big Donors for Special N.Y. Account; 'Soft Money' Builds Party's Senate Fund*, Washington Post, January 4, 2000 12

Timothy Boone, *Accept Money, Make Excuses*, Biloxi Sun Herald, July 20, 2003 22

U.S.-Japan Undersea Cable Project Focus of Probe, Bloomberg News, *available in* Los Angeles Times, July 1, 1999 25

OTHER AUTHORITIES

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Mission statement of the Democratic Senatorial Campaign Committee <http://www.dscc.org/information/about/> 11

Mission statement of the National Republican Congressional Committee <http://www.nrcc.org/nrcccontents/issuesagenda/overview.shtml> 11

Mission statement of the National Republican Senatorial Committee <http://www.nrsc.org/nrscweb/aboutus/> 11

OpenSecrets.org (visited July 30, 2003) <http://www.opensecrets.org/industries/background.asp?Ind=H4600> 20

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Party Committees Raise More than $1 Billion in 2001-2002, FEC Press Release, March 20, 2003 5

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BRIEF OF *AMICUS CURIAE* THE CENTER FOR RESPONSIVE POLITICS IN SUPPORT OF APPELLEES

INTEREST OF *AMICUS* [1]

The Center for Responsive Politics ("CRP" or "The Center") is a non-partisan, non-profit 501(c)(3) research organization that has systematically tracked the patterns in U.S. federal elections since the late 1980s. The Center was founded in 1983 by two U.S. Senators—Republican Hugh Scott of Pennsylvania and Democrat Frank Church of Idaho.

[1] This brief is filed with the consent of all parties. *Amicus* certifies that no counsel for a party authored this brief in whole or in part, nor has any person nor entity, other than *Amicus* or its counsel, made a monetary contribution to the preparation or submission of this brief.

Its purpose is to track the flow of money to federal candidates and political parties, analyze money's impact on public policy, and make this information available to the public. The Center's funding comes primarily from foundations, and it accepts no contributions from for-profit corporations or labor unions.

Nearly from its inception, the Center has played a unique role in the world of money and politics, converting the raw data collected by the Federal Election Commission (FEC) from federal candidates, parties and political action committees, and creating from it easy-to-understand profiles of candidates, industries, and the money that flows to Congress. CRP's data is widely used and respected by news organizations, the academic community, and by political professionals from all points in the ideological spectrum.

This *amicus* brief is presented as an informational resource to the Court to show the impact, growth and patterns of so-called "soft money" giving. It contains an analysis of campaign contributions based on data compiled from reports filed by political party soft money committees with the Federal Election Commission, and an analysis of the sources of those contributions by industry, organization and individual donor.

The source material for that analysis was the actual FEC database of nearly 224,000 itemized contributions over $200 given by individuals, corporations and other organizations during the 12 years when soft money contributions were required to be disclosed by the national party committees.[2] That period ran from January 1, 1991 through Election Day 2002. As such, this brief is intended to provide a factual framework to the arguments made by the defendants in this case.

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[2] An explanation of the Center's methodology in categorizing contribution data by industry is contained in the Appendix.

SUMMARY OF ARGUMENT

The ability of the parties to seek unlimited soft money contributions, exempt from the limitations imposed on hard money giving, led both the Democratic and Republican parties to rely ever more heavily on these large donations to fund their operations and election-related activities. Though it was originally claimed to be used exclusively for "non-federal" party building purposes, soft money was increasingly used by the parties to directly influence the outcome of federal elections. In fact, the giving patterns and trends unequivocally support the conclusion that these soft money contributions were being given to influence federal elections.

The giving patterns among organizational donors reveal a politically pragmatic approach, with most organizations delivering money to both sides during the same election cycle. This suggests organizational contributions have been used not as a reflection of a consistent political philosophy, but as a way to attain influence with political leaders from both parties.

The parties' reliance on these large donations created the appearance, at the very least, that these donations bought access to government officials and unduly influenced important governmental policy decisions. This is an outcome this Court, in *Buckley v. Valeo*, 424 U.S. 1 (1976) held was within Congress' authority to regulate when it upheld the contribution limits imposed by Congress in the Federal Election Campaign Act of 1971. The Bipartisan Campaign Reform Act of 2002 ("BCRA") merely cuts the connection between the ever-increasing flow of soft money and the national party committees and federal officeholders and candidates.

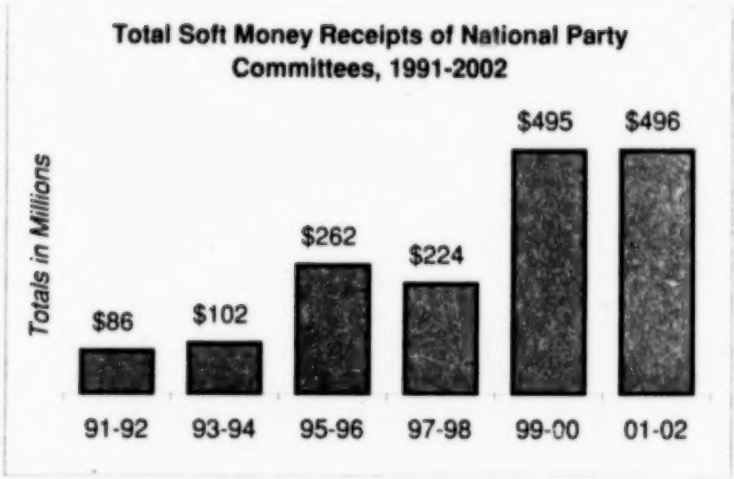
ARGUMENT

I. ESCALATION OF "SOFT MONEY" FUND-RAISING

Though the FEC first allowed "soft money" contributions to the political parties in the late 1970s, the extent of their effect on national party finances remained hidden from public view until 1991. That was when an FEC rule [3] requiring full disclosure of the contributions became effective.

Once it became visible, the extent of soft money's increasingly important role in party fundraising became fully apparent. At the same time, the dollars collected in the parties' soft money accounts began to accelerate sharply. In the 1992 election cycle, the Democratic and Republican national party committees (including the Democratic and Republican National Committees and both parties' House and Senate fundraising committees) raised a combined total of $86.1 million. By the 2000 cycle the total rose to nearly half a billion dollars, a level that was matched in the most recent cycle, even though there was no presidential election held. The following charts illustrate the trends behind those summary numbers in several ways.

[3] 11 CFR § 104.8(e) (1991).

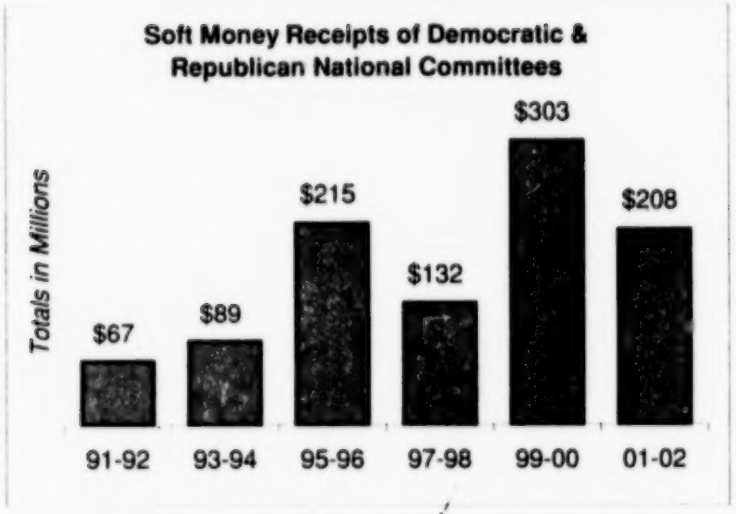


Source: Federal Election Commission [4]

Historically, the biggest leaps in soft money fundraising have occurred in election cycles when presidential campaigns took place. From 1994 to 1996 the amount of soft money raised by the parties more than doubled, as illustrated in the chart above. It doubled again in 2000. During mid-term election cycles, the fundraising levels remained close to where they had been in the previous presidential election cycle. Even in mid-term cycles, however, the pace of soft money fundraising doubled every four years.

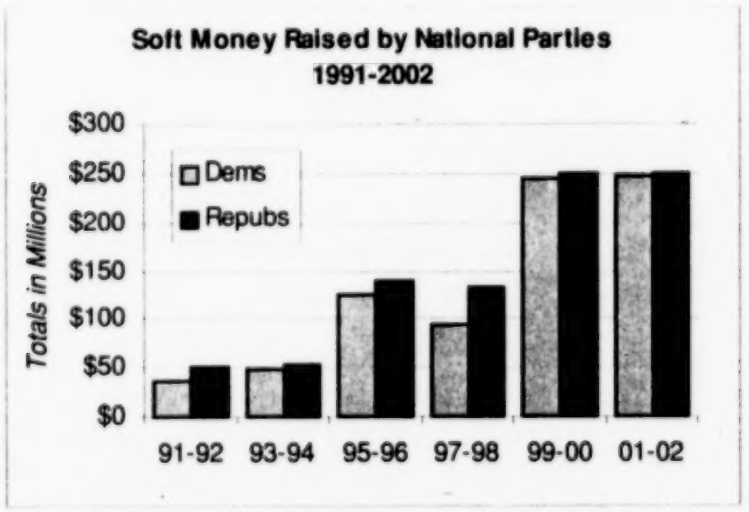
The trend of contribution spikes during presidential election cycles is even more pronounced when the soft money that went to the Democratic and Republican National Committees is isolated as shown in the chart below. The chart does not include money that went to the parties' congressional campaign committees.

[4] *Party Committees Raise More than $1 Billion in 2001-2002*, FEC Press Release, March 20, 2003.



Source: Federal Election Commission

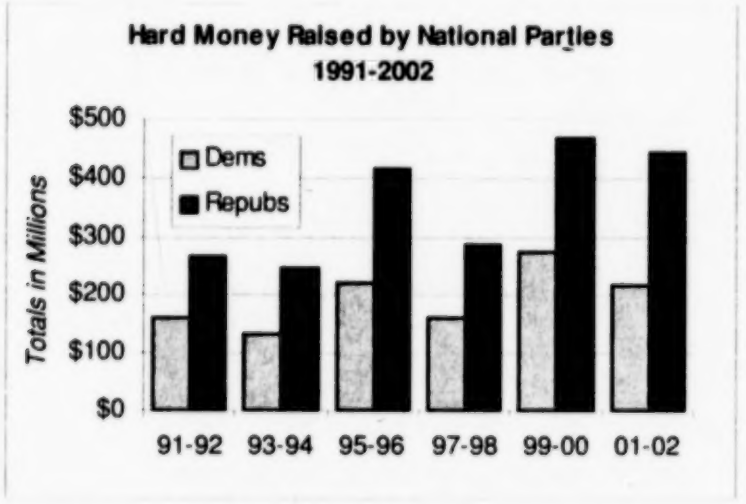
Notably, both parties were able to raise roughly equal amounts of soft money during the period such contributions were legal and disclosed. The chart below shows the breakdown by party.



Source: Federal Election Commission

This relative parity in soft money fundraising sharply contrasts with the disparity between the parties in raising hard money. Republicans have long held the advantage in those contributions, as is clear in the following chart. In the most

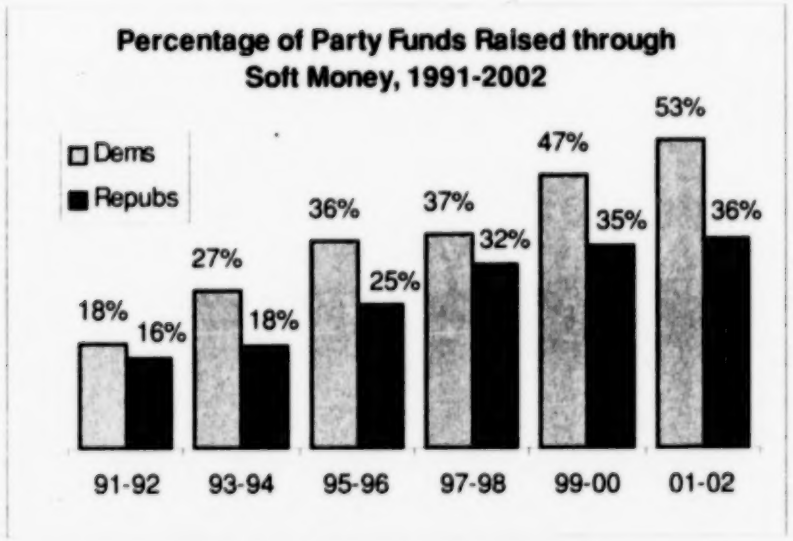
recent election cycle, for example, the Democratic federal party committees raised just $217 million in hard money contributions, less than half the $442 million raised by the Republicans.



Source: Federal Election Commission

Raising money quickly is more easily accomplished if the donors write big checks rather than small ones. As competition between the parties grew ever more contentious throughout the 1990s and the beginning of the new century, party fundraisers grew ever more reliant on collecting six-figure (or larger) donations through their soft money committees. This was especially true of the Democratic Party, which for years had lagged far behind the Republicans in its ability to raise hard money contributions.

The chart below shows each party's reliance on soft money during the past six election cycles. The figures include only funds collected by the Democratic and Republican National Committees, and each party's two congressional committees.



Source: Federal Election Commission

The Democrats' heavy reliance on soft money to fill the party's coffers did act as a counterbalance to the longstanding Republican advantage in collecting contributions from small donors. This trend was never so obvious as in the 2001-2002 cycle, when the party collected an unprecedented spate of large contributions from a relative handful of wealthy individual donors. Some 22 individuals gave soft money donations of $1 million or more in the 2002 election cycle – more than twice as many as had given in all previous election cycles. Of those 22 donors, 17 gave exclusively to the Democrats.

TOTAL	NAME	CITY	DEMS	REPUBS
$9,280,000	Saban, Haim	Los Angeles, CA	100 %	0 %
$7,390,000	Echaner, Fred	Chicago, IL	100 %	0 %
$6,700,000	Bing, Stephen L.	Los Angeles, CA	100 %	0 %
$3,288,786	Kirsch, Steven T.	Los Altos Hills, CA	100 %	0 %
$2,255,250	Schwartz, Bernard L.	New York, NY	100 %	0 %
$2,021,000	Corzine, Jon S.	Summit, NJ	100 %	0 %
$1,930,000	Simon, Bren & Melvin	Carmel, IN	100 %	0 %
$1,835,000	Angelos, Peter G.	Baltimore, MD	100 %	0 %

TOTAL	NAME	CITY	DEMS	REPUBS
$1,815,000	O'Quinn, John M.	Houston, TX	100 %	0 %
$1,500,000	Arnall, Dawn & Roland E.	Orange, CA	33 %	67 %
$1,450,000	Abraham, S. Daniel	West Palm Beach, FL	100 %	0 %
$1,295,000	Lindner, Carl H.	Cincinnati, OH	10 %	90 %
$1,205,000	Kushner, Charles	Florham Park, NJ	100 %	0 %
$1,180,000	Sussman, S. Donald & Laurie	Greenwich, CT	96 %	4 %
$1,053,000	Gund, Louise L.	Berkeley, CA	100 %	0 %
$1,040,000	Hindery, Leo J.	Sunnyvale, CA	100 %	0 %
$1,035,000	Johnson, Robert L.	Washington, DC	100 %	0 %
$1,020,000	Wasserman, Casey	Los Angeles, CA	100 %	0 %
$1,000,000	Alles, Malini	Los Altos Hills, CA	100 %	0 %
$1,000,000	Farmer, Richard T.	Cincinnati, OH	0 %	100 %
$1,000,000	Fulton, Stanley E.	Las Vegas, NV	0 %	100 %
$1,000,000	Willis, Ernest M.	Arlington, VA	100 %	0 %

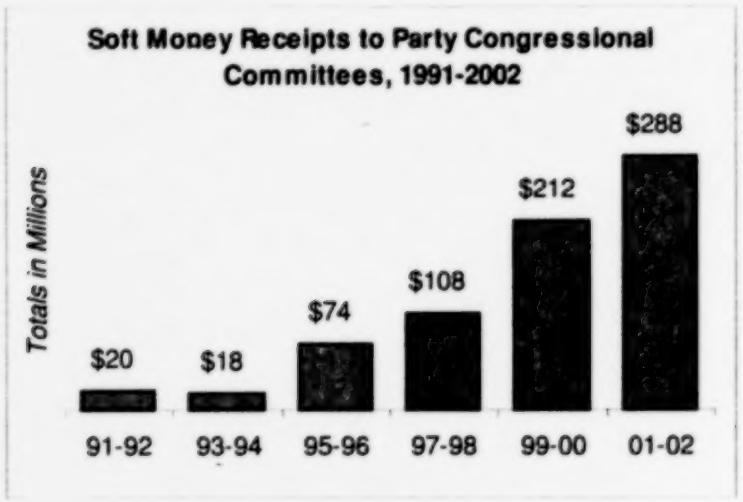
Overall, these giving patterns—with their direct correlation to federal elections—demonstrate that the soft money now banned by BCRA was being sought in connection with, and to influence, federal elections. As shown below, this connection is even more stark when contributions to the parties' Senate and House fundraising committees are analyzed.

II. "Non-Federal" in Name Only

The cyclical nature of the fundraising by the RNC and DNC reflects the connection between soft money and presidential races. Soft money receipts increased during each presidential cycle, stayed about the same for the next mid-term election, and then increased again for the next presidential election. While this is strong evidence of the connection between soft money and federal elections, one element of the parties' soft money fundraising was not

subject to the cyclical patterns that affected contributions to the Democratic and Republican National Committees, but followed a very different trajectory of its own. That exception is well worth noting, for it even more clearly illustrates a crucial distinction between the theory of soft money and actual practice.

The exception is in soft money collected by the political parties' four congressional fundraising committees – the Democratic Congressional Campaign Committee (DCCC), the Democratic Senatorial Campaign Committee (DSCC), the National Republican Congressional Committee (NRCC) and the National Republican Senatorial Committee (NRSC). Fundraising for these groups has been going in one direction only: up. The chart below shows their combined soft money revenues between 1991 and 2002.



Source: Federal Election Commission

By their own admission, these campaign committees have an unambiguous purpose: to elect members of their own party to the U.S. House of Representatives and the U.S. Senate. The committees' own Web sites state this explicitly.

Democratic Congressional Campaign Committee:

The Democratic Congressional Campaign Committee works to promote issues of importance to the Democratic Party and is the only national party committee whose principal mission is to elect Democrats to the House of Representatives.[5]

Democratic Senatorial Campaign Committee:

The Democratic Senatorial Campaign Committee (DSCC) is the national committee of the Democratic Party formed to elect Democratic members of the United States Senate.[6]

National Republican Congressional Committee:

The NRCC is a political committee devoted to increasing the 229-member Republican majority in the U.S. House of Representatives.[7]

National Republican Senatorial Committee:

It is our sole responsibility to make sure that Republican Senate candidates are elected to the United States Senate.[8]

These four committees exist to elect members of Congress from their respective parties. Despite the fact that "soft money" was supposed to be used for non-federal party-

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[5] Mission statement of the Democratic Congressional Campaign Committee <http://www.dccc.org/about/>.

[6] Mission statement of the Democratic Senatorial Campaign Committee <http://www.dscc.org/information/about/>.

[7] Mission statement of the National Republican Congressional Committee <http://www.nrcc.org/nrcccontents/issuesagenda/overview.shtml>.

[8] Mission statement of the National Republican Senatorial Committee <http://www.nrsc.org/nrscweb/aboutus/>.

building activities[9], these committees formed soft money committees of their own and raised unlimited contributions. From 1991-2002, these four committees have collected a combined $1.014 billion dollars in soft money contributions.[10] The money came from an array of corporations, trade associations, individuals and interest groups with business before Congress—interests that clearly saw benefits in linking their Capitol Hill lobbying efforts with large contributions.

These congressional committees have not been the only ones setting up soft money committees to affect federal elections. In recent election cycles, even *candidates* for federal office have gotten into the soft money business, establishing joint fundraising committees to raise hard money for their own campaigns and, at the same time, soft money for their party to spend on their behalf. The practice first attracted widespread attention in the early stages of Hillary Rodham Clinton's 2000 U.S. Senate campaign in New York.[11]

Mrs. Clinton's "New York Senate 2000" committee was established to collect soft money contributions for both the New York Democratic Party and the Democratic Senatorial Campaign Committee (DSCC), while proceeds to her "New York Democratic Victory 2000 Non-Federal" committee were to benefit the Democratic National Committee.[12]

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[9] *See* FEC Advisory Op. No. 1979-17 *and* 11 C.F.R. §§ 102.5, 106.5 (2002).

[10] *See* FEC Press Release, *supra* note 4.

[11] *See* John M. Broder, *Democrats Able to Circumvent Contribution Limit*, New York Times, December 22, 1999, at A1; *see also* Susan B. Glasser, *Clinton Taps Big Donors for Special N.Y. Account; 'Soft Money' Builds Party's Senate Fund*, Washington Post, January 4, 2000, at A1.

[12] *See* Robert Zausner, *Loophole Helps Clinton Exceed Donation Limit*, Philadelphia Inquirer, June 15, 2000, at A28.

An article in the Bureau of National Affairs' *Money & Politics Report* of December 6, 1999 explained how the arrangement worked:

> Perhaps not coincidentally, the DSCC transferred $100,000 to the New York State Democratic Party for TV 'issue ads' promoting Hillary Clinton. The ads, which began airing in November, were paid for with unregulated soft money and did not explicitly call for a vote for Clinton. However, they were criticized by Republicans, who suggested they broke campaign finance laws because they were improperly coordinated with the Clinton campaign.[13]

While the committee was careful not to explicitly guarantee that the money raised would directly benefit the First Lady's Senate campaign—but would be spread by the DSCC to other Senate races—donors were undoubtedly aware that Mrs. Clinton would be very grateful for their contributions, and the bigger the better. Indeed, news reports emerged in early 2000 about a $300,000 contribution received by New York Senate 2000 that appeared to be aimed at lobbying Mrs. Clinton's husband, the President.[14]

The contributions were given by two women from Westport, Connecticut—Francine Goldstein and Sandra Wagenfeld—who had an abiding interest in a decision by the European Commission whether to allow older jets equipped with "hush kits" to land at European airports. Ms. Goldstein owned the company that manufactured the kits, and President Clinton reportedly met with the president of the European Commission to urge him to permit the landing of airplanes

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[13] Kenneth P. Doyle, *Fund-Raising Unit Linked to Mrs. Clinton Provided $200,000 in Soft Money to DSCC*, BNA's Money & Politics Report (December 6, 1999) <http://pubs.bna.com/>.

[14] *See* Sheila Kaplan, Gary Cohen, *Of Perks and the Purse*, U.S. News & World Report, January 24, 2000, at 21.

equipped with those kits.[15] This scenario raises at least the appearance that the two donors' real intention was to lobby the administration to revise its trade policy with the European Commission in a way that would financially benefit them.

When Mrs. Clinton's opponent at the time, New York City Mayor Rudy Giuliani, learned of the new soft money "joint fundraising" committee, his initial reaction was to lambaste it as a perversion of the campaign finance laws. Later, his opinion changed and he set up a similar committee of his own.[16] In all, at least 10 Democratic and Republican Senate candidates collected contributions through soft money joint fundraising committees in 2000, as did 11 more in the 2002 campaign.[17] Other Senate candidates accomplished

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[15] *Id.*

[16] *See* Giuliani Victory Committee letter to FEC Reports Analysis Division, May 3, 2000 ("The Giuliani Victory Committee is the joint fundraising representative of which the Friends of Giuliani Exploratory Committee and the National Republican Senatorial Committee are the only joint fundraising participants").

[17] In 2000, joint fundraising soft money committees were established by the campaigns of Republicans John Ashcroft in Missouri (Ashcroft Victory Committee), Conrad Burns in Montana (Burns Victory Committee), Rudy Giuliani in New York (Giuliani Victory Committee), Slade Gorton in Washington (Gorton Victory Committee), Rod Grams in Minnesota (Grams Victory Committee), Orrin Hatch in Utah (Hatch Victory Committee), and Rick Santorum in Pennsylvania (Santorum Victory Committee). In the 2002 campaign, they were set up by Republicans Lamar Alexander in Tennessee (Alexander Victory Committee), Ron Coleman in Minnesota (Coleman Victory Committee), Elizabeth Dole in North Carolina (Dole Victory Committee), Tim Hutchinson in Arkansas (Hutchinson Victory Committee), Mitch McConnell in Kentucky (McConnell Victory Committee), Bob Smith in New Hampshire (Bob Smith Victory Committee), Gordon Smith in Oregon (Gordon Smith Victory Committee), Ted Stevens in Alaska (Stevens Victory Committee), and George Voinovich in Ohio (Voinovich Victory Committee). Additional committees in other states were also established, but did not report collecting any funds.

the same effect by establishing so-called "527 committees" that reported only to the Internal Revenue Service, not to the FEC.[18]

As with the Clinton campaign, there was little pretense among the other committees that these donations would be supporting the parties generally. Rather, the candidates made it quite clear that they were grateful for the donations--which were dozens of times larger than the $2,000 maximum that could legally be donated in hard money directly to their campaigns.[19] The Democratic candidates generally named their committees after the state they were running in, setting up eight of them in 2000 and no fewer than 19 in 2002.[20] Many Republican candidates took an even bolder approach, naming their soft money committees—as with the Santorum Victory Fund in Pennsylvania—directly after the candidates themselves.[21]

Were the donors under the impression that their soft money contributions would be used to support specific Senate races, rather than the party generally? CRP posed this question to Peter Buttenwieser, a major Democratic donor who invested heavily in several of those committees, including Michigan Senate 2000, a soft money committee set up

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[18] *See* Mike Soraghan, *'Soft' Cash Dominates Senate Race*, Denver Post, September 30, 2002, at A1.

[19] *See* Broder, *supra* note 11.

[20] Democratic Senate candidates setting up so-called 527 fundraising committees in 2000 included Mel Carnahan in Missouri, Hillary Clinton in New York, Dianne Feinstein in California, Ron Klink in Pennsylvania, Zell Miller in Georgia, Bill Nelson in Florida, Debbie Stabenow in Michigan and Bob Weygand in Rhode Island. In 2002 committees were set up to benefit the Democratic Senate candidates in Arkansas, Colorado, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Michigan, Missouri, Montana, New Hampshire, New Jersey, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee and Texas.

[21] *See* note 17 *supra*.

for Debbie Stabenow's campaign to defeat Republican incumbent Spencer Abraham. Buttenwieser's response was published in *Speaking Freely: Washington Insiders Talk About Money in Politics*.

> *CRP: When you give $100,000 to that joint fundraising committee, is it your expectation that money's going to be used to elect her in that state?*
>
> Oh yeah, I know exactly what it's going to do. I literally know what it's going to do. I mean, I'm sitting there with the professionals in a room, and I don't know exactly what the ad's going to look like, but I know what the ad's going to try to do. So it's a fairly educated well-informed understanding.
>
> Now, if I send some money to [North Carolina Senate candidate] Erskine Bowles for that, and [Arkansas Senate candidate Mark] Pryor for that and [Colorado Senate candidate] Tom Strickland for that, I don't know, 'cause I'm not in it very well. But when it comes to [New Hampshire Senate candidate Jean] Shaheen, I know. When it comes to [Maine Senate candidate] Chellie Pingree, I very much know, and when it comes to Mrs. Carnahan, I very much know . . .[22]

What becomes apparent by examining the contributions themselves—even without talking with the donors—is that soft money contributions over the years became an increasingly important means of delivering huge contributions, many times over the legal limit, to benefit specific federal candidates.

III. INDUSTRY TRENDS IN SOFT MONEY GIVING

Not only did the national political party committees and federal candidates solicit soft money for federal elections, but

[22] LARRY MAKINSON, SPEAKING FREELY: WASHINGTON INSIDERS TALK ABOUT MONEY IN POLITICS 134-135 (2003).

the giving patterns of the donors make it clear that the money was being contributed to influence federal elections. Four industries—tobacco, pharmaceuticals, casinos/gambling and telecommunications services & equipment—gave more than half their campaign dollars from 1991-2002 in soft money. All four combined their soft money giving with intense lobbying efforts aimed at influencing federal government decisions in Washington. Together, they provide a revealing glimpse of the patterns and motivations typical of major soft money donors.

A. TOBACCO

For the tobacco industry, the big switch to soft money came in 1996, a time when the Clinton administration was making public its support of Food and Drug Administration proposals to regulate nicotine as a drug and restrict the marketing of cigarettes to minors.[23] The industry's contributions—both hard and soft—peaked in 1996, declined somewhat in 1998 and have held steady since that time.

The dominant giver was Philip Morris, the largest tobacco company in the world and the second-biggest soft money donor of all, behind only the American Federation of State, County and Municipal Employees. In all, the firm delivered more than $12.3 million in soft money donations between 1991 and 2002, 83 percent of it to Republican Party committees.[24] During the same period, RJR Nabisco, the number two tobacco giant, gave more than $4 million in soft money contributions, nearly 80 percent to Republicans. UST Inc, which specializes in smokeless tobacco, also gave slightly more than $4 million, with 88 percent going to the

[23] *See* Peter H. Stone, *Some Hard Facts About Soft Money*, National Journal, March 23, 1996, at 672.

[24] All the industry and corporate figures cited in this section were calculated by CRP from the FEC soft money database.

GOP. Loews Corp., whose diversified interests also include hotels, gave just over $2.5 million, with 56 percent to the Republicans. Brown & Williamson Tobacco gave slightly under $2.5 million, with 98 percent of its dollars delivered to the Republican Party. In this case, the industry clearly aligned itself, both politically and financially, with the Republican Party, which was seen as more sympathetic to the tobacco companies' issues. Its lopsided giving left Democrats free to criticize the Republicans for their alignment with the tobacco industry, something many candidates did in their campaigning.[25]

Overall, tobacco industry contributions—both hard and soft combined—peaked in 1996 at $10.6 million. From that year until soft money ended in 2002 with the enactment of BCRA, more than 60 percent of tobacco's contributions were given in soft money to the parties, rather than in hard money contributions to candidates. Indeed, as political contributions from tobacco companies came to be considered a political liability for many federal candidates and office-holders, the firms' strategy of giving to the parties may have made practical political sense.[26]

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[25] *See* Mark H. Rodeffer, *Dems Hit Coleman on Campaign Cash*, NationalJournal.com (October 24, 2002) <http://nationaljournal.com/members/adspotlight/2002/10/1024mnsen1.htm>; *see also* Meg Kinnard, *Richardson Goes After Otter's Politics*, NationalJournal.com (September 19, 2002) <http://nationaljournal.com/members/adspotlight/2002/09/0919brid1.htm>.

[26] *See* Stone, *supra* note 23.

SOFT MONEY CONTRIBUTIONS FROM THE TOBACCO INDUSTRY, 1991-2002

ELECTION CYCLE	TOTAL	TO DEMS	TO REPUBS
1992	$2,807,955	33%	67%
1994	$2,518,893	14%	86%
1996	$6,904,687	15%	85%
1998	$5,481,042	15%	85%
2000	$5,318,039	11%	89%
2002	$6,010,173	19%	81%

OVERALL TOBACCO INDUSTRY GIVING, 1991-2002

ELECTION CYCLE	TOTAL	SOFT MONEY	HARD MONEY	TO DEMS	TO REPUBS
1992	$5,876,978	48%	52%	44%	56%
1994	$5,314,238	47%	53%	33%	67%
1996	$10,580,141	65%	35%	19%	81%
1998	$8,614,588	64%	36%	21%	79%
2000	$8,610,638	62%	38%	16%	83%
2002	$8,929,509	65%	35%	22%	78%

B. PHARMACEUTICALS/HEALTH PRODUCTS

Like Big Tobacco, the pharmaceutical industry is consolidated into a relative handful of giant corporations that are the dominant political players. Unlike tobacco, its contributions are still on the rise. Drug companies stepped into soft money with a relatively modest $2.3 million in the 1992 election cycle, ranking 10th in soft money giving among all industries. By the end of the 2002 election cycle, the industry had moved up to 5th place and boosted its soft money contributions to more than $18.2 million.

The top soft money contributors in the industry were Pfizer Inc., with $4.5 million in contributions (86 percent to

Republicans); Bristol-Myers Squibb, $4.2 million (84 percent to Republicans); Pharmaceutical Research & Manufacturers of America, the industry's trade association, which gave just under $3.9 million (96 percent to Republicans), Eli Lilly & Co, giving just over $3 million (75 percent to Republicans), Schering-Plough, $2.3 million (85 percent to the GOP), and Pharmacia, $2.2 million (84 percent to the GOP). The industry also includes manufacturers of non-prescription health supplements—a segment that retains a very strong interest in keeping federal regulators out of its business.[27] The top donor among that group was S. Daniel Abraham, who founded Slim-Fast Foods and Thompson Medical. Abraham and his company gave just under $2.4 million, with 93 percent going to Democrats. Metabolife International, giving all its money through the company itself, donated $1.7 million (60 percent to Democrats).

In all, 14 companies from the Pharmaceutical and Health Products industry gave $1 million or more in soft money during the 12 years such contributions were disclosed. As the charts below show, drug firms' soft money giving increased dramatically as issues of concern to the industry came before Congress.

[27] *OpenSecrets.org* (visited July 30, 2003) <http://www.opensecrets.org/industries/background.asp?Ind=H4600>; *see also* Louis Jacobson, Shawn Zeller, *K Street for August 4, 2001*, National Journal, August 4, 2001, *and* Jeffrey Goldberg, *Next Target: Nicotine*, New York Times, August 4, 1996, at Section 6, Page 23.

SOFT MONEY CONTRIBUTIONS FROM THE PHARMACEUTICAL INDUSTRY, 1991-2002

ELECTION CYCLE	TOTAL	TO DEMS	TO REPUBS
1992	$2,324,878	36%	64%
1994	$2,170,257	32%	68%
1996	$6,755,563	34%	66%
1998	$6,233,781	34%	66%
2000	$15,462,572	31%	69%
2002	$18,206,604	18%	82%

OVERALL PHARMACEUTICAL INDUSTRY GIVING, 1991-2002

ELECTION CYCLE	TOTAL	SOFT MONEY	HARD MONEY	TO DEMS	TO REPUBS
1992	$7,936,489	29%	71%	43%	57%
1994	$7,565,883	29%	71%	44%	56%
1996	$13,665,104	49%	51%	34%	66%
1998	$12,886,669	48%	52%	35%	65%
2000	$26,660,336	58%	42%	31%	69%
2002	$26,941,139	63%	37%	24%	75%

C. CASINOS & GAMBLING

Over the past 20 years, the casino and gambling industry has undergone a revolution in the United States. A generation ago, if someone wanted to legally bet in a casino he or she had two choices: Las Vegas or Atlantic City. Today, casinos operated by major corporations and by Indian tribes stretch from coast to coast.

Most of the government decisions responsible for that revolution were made by state and local governments, and the full extent of political contributions made to those officials over the years has never been tallied. Even though the federal government has generally kept its hands off the gaming industry—with the exception of the Bureau of Indian Affairs,

which certifies tribes entitled to open casinos – millions of dollars have flowed to members of Congress and the national political parties from gaming interests. More than half that money—over $26 million between 1991 and 2002 – was given in soft money contributions to the Democratic and Republican parties. Overall, the industry's largesse has been fairly evenly split between the parties, though a noticeable contrast can be seen between the corporate casinos—whose $18 million has gone two-to-one to Republicans—versus Indian casinos—whose $8 million has favored Democrats by a three-to-one margin.

SOFT MONEY CONTRIBUTIONS FROM THE GAMING INDUSTRY, 1991-2002

ELECTION CYCLE	TOTAL	TO DEMS	TO REPUBS
1992	$468,768	63%	37%
1994	$1,492,469	45%	55%
1996	$4,111,041	56%	44%
1998	$4,155,350	35%	65%
2000	$7,670,413	55%	45%
2002	$8,544,926	39%	61%

Like tobacco, and in recent years like the pharmaceutical industry, direct political contributions from the gaming industry to congressional and presidential candidates may sometimes cause political problems for the recipients if those industries are unpopular with voters.[28] That may be one

[28] *See* Ryan Connors, *Ferguson Hits Kennedy for Gambling Ties*, NationalJournal.com (March 29, 2002) <http://nationaljournal.com/members/adspotlight/2002/03/0329cfri1.htm>; *see also* Anonymous, *Beasley Slams Politician Hodges*, NationalJournal.com (Oct. 19, 1998) <http://nationaljournal.com/members/adspotlight/1998/10/1008db1.htm> *and* Timothy Boone, *Accept Money, Make Excuses*, Biloxi Sun Herald, July 20, 2003, at D3.

reason the gaming industry has invested so heavily in soft money, which goes to the parties instead. The industry's tendency to give ample funds to both parties illustrates one of the fundamental verities about political contributions: by giving generously to both Democrats and Republicans, specific donors—or an entire industry—can often neutralize potential opposition, or at least ensure that their particular issue does not become a lightning rod seized by one party to attack the other.

OVERALL GAMING INDUSTRY GIVING, 1991-2002

ELECTION CYCLE	TOTAL	SOFT MONEY	HARD MONEY	TO DEMS	TO REPUBS
1992	$1,540,219	30%	70%	67%	33%
1994	$2,984,249	50%	50%	53%	47%
1996	$7,048,532	58%	42%	53%	47%
1998	$6,694,488	62%	38%	40%	60%
2000	$12,426,660	62%	38%	55%	45%
2002	$14,270,088	56%	44%	52%	48%

Six gaming industry donors gave $1 million or more between 1991 and 2002, led by MGM Mirage, which gave just over $3 million (62 percent to Republicans). Other top donors included the Mandalay Resort Group ($1.8 million, 85 percent to Republicans); International Game Technology ($1.8 million, 65 percent to Republicans); the Mashantucket Pequot Tribe ($1.3 million, 63 percent to Democrats; Las Vegas casino executive Stanley Fulton ($1.2 million, 100 percent to Republicans); and Harrah's Entertainment, $1.1 million, 58 percent to Democrats.)

D. TELECOMMUNICATIONS SERVICES & EQUIPMENT

In contrast to the other industries above whose soft money contributions came mainly from large corporations, the Telecommunications Services and Equipment industry's biggest donor was not a company, but an individual: Bernard

Schwartz, head of Loral Space & Communications. Schwartz delivered more than $5.3 million in soft money between 1991 and 2002, virtually all of it to the Democratic Party. His firm is currently restructuring under Chapter 11, as is the second-leading contributor on the list, Global Crossing.[29]

The political benefits Schwartz's contributions produced for his company erupted into a scandal in 1998 that prompted a congressional investigation.[30] At issue was a waiver granted by the Clinton administration for the transfer of sensitive satellite technology to the Chinese government—technology that could be used not only for commercial purposes, but for military purposes as well. The State Department had initially denied permission for the transfer on the grounds of national security. In February 1998, however, President Clinton overruled that decision, transferring responsibility to the Commerce Department, which then approved a waiver for Loral. Schwartz was the single biggest contributor to the Democratic Party in the 1996 election cycle, with more than $600,000 in soft money contributions. He gave another million dollars in the 1998 cycle, nearly $1.3 million in the 2000 cycle, and over $2.2 million in 2001-2002. The incident remains a powerful example of the nexus between large political donations and significant government decisions that may directly benefit a donor.

Global Crossing offers another illustrative case study. The firm's plans to build undersea fiber-optic cables connecting the U.S. to Japan hit a snag in 1999 when a consortium of rivals—AT&T, MCI and Sprint—sought permission from the

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[29] *See* J. Lynn Lunsford, Andy Pasztor, Anne Marie Squeo, *Space Woes Zap Loral, Boeing*, Wall Street Journal, July 16, 2003; *and* Dennis K. Berman, Yochi J. Dreazen, *Global Crossing Deal May Hit Snag*, Wall Street Journal, July 9, 2003.

[30] *See* John Mintz, *China Aid Hurt U.S. Security, Panel Says*, Washington Post, December 31, 1998, at A1.

Federal Communications Commission to build one of their own.[31] Out of nowhere, Global Crossing emerged as a political powerhouse in Washington, thanks to a multi-million-dollar lobbying effort and $2 million in soft money contributions during the 1999-2000 election cycle. The money was split almost evenly between the two parties (Democrats got 52 percent), and it came both from the corporation and from three of its top executives: co-chairmen Gary Winnick and Lodwrick Cook and CEO Leo Hindery. The company disappeared from the political radar screen almost as quickly as it arose, filing for bankruptcy not long after Enron did and facing investigations for accounting irregularities.

SOFT MONEY CONTRIBUTIONS FROM THE TELECOM SERVICES/EQUIPMENT INDUSTRY, 1991-2002

ELECTION CYCLE	TOTAL	TO DEMS	TO REPUBS
1992	$440,566	30%	70%
1994	$591,203	50%	50%
1996	$2,588,990	71%	29%
1998	$2,638,887	65%	35%
2000	$11,269,594	63%	37%
2002	$8,413,392	57%	43%

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[31] *See U.S.-Japan Undersea Cable Project Focus of Probe*, Bloomberg News, *available in* Los Angeles Times, July 1, 1999, at C3; *see also AT&T Plan for Japan Cable Clears Hurdle*, Bloomberg News, *available in* New York Times, July 10, 1999, at C3.

OVERALL TELECOM SERVICES/EQUIPMENT INDUSTRY GIVING, 1991-2002

ELECTION CYCLE	TOTAL	SOFT MONEY	HARD MONEY	TO DEMS	TO REPUBS
1992	$1,708,705	26%	74%	46%	54%
1994	$1,759,179	31%	69%	54%	46%
1996	$4,862,638	53%	47%	56%	43%
1998	$5,199,605	51%	49%	53%	46%
2000	$18,220,484	62%	38%	56%	44%
2002	$12,853,876	65%	35%	54%	46%

E. THE ROLE OF ORGANIZED LABOR

While most business groups have long supported the Republican Party in their campaign contributions, labor unions have for generations been a mainstay of financial support for the Democratic Party. They, too, were quick to adapt to the new regime of soft money contributions, as was obvious when the source of that money was first disclosed in the 1991-92 election cycle. In that cycle and the five to follow, unions delivered a total of just under $95 million. Ninety-eight percent of it went to the Democrats.

SOFT MONEY CONTRIBUTIONS FROM ORGANIZED LABOR, 1991-2002

ELECTION CYCLE	TOTAL	TO DEMS	TO REPUBS
1992	$4,319,238	99%	1%
1994	$4,417,358	99%	1%
1996	$9,546,686	98%	2%
1998	$10,322,136	97%	3%
2000	$30,418,895	99%	1%
2002	$35,867,806	99%	1%

While the bulk of union dollars continue to flow to Democratic candidates in hard money through political action committees, the proportion of labor dollars delivered in soft money continued to rise with each new election cycle while soft money was legal—growing from just 8 percent of all labor money in 1992 to more than one dollar in every three in both the 2000 and 2002 cycles.

OVERALL LABOR GIVING, 1991-2002

ELECTION CYCLE	TOTAL	SOFT MONEY	HARD MONEY	TO DEMS	TO REPUBS
1992	$53,341,208	8%	92%	94%	5%
1994	$51,044,388	9%	91%	96%	4%
1996	$64,949,299	15%	85%	93%	6%
1998	$60,859,967	17%	83%	92%	8%
2000	$90,152,281	34%	66%	94%	6%
2002	$96,529,105	37%	63%	93%	7%

Even considering that the largest unions have millions of members nationwide, their impact as soft money donors is impressive. AFSCME, the American Federation of State, County and Municipal Employees, was the single biggest donor of soft money from 1991-2002, with more than $15.7 million in contributions, all to the Democrats. Six other unions ranked in the top 20: the Service Employees International Union ($11.3 million); Communications Workers of America ($9.2 million); the Carpenters & Joiners Union ($7.1 million); the American Federation of Teachers ($6.9 million); the United Food & Commercial Workers Union ($5.5 million); and the National Education Association ($4.8 million). Virtually all the money went to Democratic Party committees; the most bipartisan among them was the NEA, which gave 7 percent of its soft money to the Republicans.

CONCLUSION

As the above analysis demonstrates, soft money contributions at the national level are directly related to federal election campaigns and the policy agendas of individuals, industries and groups. Those agendas, like the soft money contributions, are focused on decisions made by members of congress and the occupant of the White House. Contrary to the claim of some, these large soft money contributions are not primarily focused on state and local races or party building. These contributions are "non-federal" only in the sense that, prior to the BCRA, the FEC had declared them so. For all other intents and purposes, the donors and the recipients were linked in a soft money strategy that was aimed at helping elect Federal candidates to further a national agenda of the donors.

Respectfully submitted,

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APPENDIX

METHODOLOGY

For this *amicus* brief the Center reviewed nearly 224,000 itemized soft money contributions made to political party committees between January 1, 1991 and November 7, 2002—the entire lifespan of disclosed soft money contributions to the national parties. This includes all contributions above $200 made by individuals, corporations, or other organizations. Wherever possible, the contributions were then coded by industry/interest group. For organizations, this classification was based on the company or association's primary business interest, or in the case of ideological groups, the political issues it promotes. For individuals, the code was based on the donor's occupation/employer, as reported by the recipient committee based on the disclosure by the donor.

The codes used for business groups follow the general guidelines of the Standard Industrial Classification (SIC) codes initially designed by the Office of Management and Budget, and later replaced by the North American Industry Classification System (NAICS), developed jointly by the U.S., Canada and Mexico. These groupings were adjusted as needed to make them more applicable to common political demarcations, such as jurisdictional divisions in the structure of congressional committees. For labor and ideological groups, the Center derived its own classification system.

The system is hierarchical, divided into 13 broad sectors. Ten of these sectors reflect the world of business (such as defense, transportation, and health care). Labor has its own sector, as does the broad spectrum of ideological and single-interest groups.

At the more detailed level, the codes are broken down into more than 80 "industries"—for example air transport, insurance, and health professionals. Finally, the most detailed

"category" level covers more than 400 specific groupings, from sugar growers to chiropractors, and from teachers unions to supporters of Israel.

The Center has been using this coding system since 1988, updating it when needed as new industries and interest groups emerge. Over the years, the system has made possible a broad analysis of the billions of dollars of hard and soft money donations given to federal candidates and political parties.

Using the classification system, the Center compiles contribution profiles for every member of Congress and every candidate for federal office who collects political contributions. A vast amount of this information is available at no cost on the Center's Web site at http://www.opensecrets.org.